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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Commnet Wireless, Inc.)
Commnet of Delaware, LLC)
Elbert County Wireless, LLC)
Chama Communications Corp.)
Grizzly Bear Wireless Corp.)
Indian Hills Wireless, Inc.)
Excomm, LLC)
Commnet PCS, Inc.)
MoCelCo, LLC)
Tennessee Cellular Telephone Company)
Commnet Capital, LLC)
Commnet of Florida, LLC)
)
For Limited Waiver of Deadlines for)
Implementation of Phase II E911 to the)
Same Extent as Afforded to Other Tier III)
Small, Rural Wireless Carriers)
)
And for Partial Waiver of Section 20.18(d) to)
Demarcate Cost Allocation at the)
Wireless Carrier Mobile Switching Center)

CC Docket No. 94-102

To: The Commission

PETITION FOR LIMITED AND TEMPORARY
WAIVER OF DEADLINES FOR IMPLEMENTATION
OF PHASE II E911 ON THE SAME BASIS
AS OTHER TIER III WIRELESS CARRIERS,
AND FOR WAIVER OF KING COUNTY DEMARCATION POINT
RULING

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September 9, 2002

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SUMMARY

Each of the Petitioner-Small-Carriers is a Tier III carrier, as defined by the Commission in *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems Phase II Compliance Deadlines for Non-Nationwide CMRS Carriers*, CC Docket No. 94-102, FCC 02-210, released July 26, 2002 ("*Small Carrier E911 Extension*") Even if all of the Petitioner-Small-Carriers were deemed a single carrier and their subscriber figures combined, the combined entity still would be a Tier III carrier. This is because the Petitioner-Small-Carriers serve only remote, rural areas, where the circumstances differ greatly from those that exist in major urban areas and with respect to major, nationwide-footprint carriers.

The same policy considerations which led this Commission to afford limited relief to other Tier III wireless carriers in the *Small Carrier E911 Extension* decision also justify extension of the same relief to the Petitioner-Small-Carriers here (subject, of course, to the same conditions imposed on other Tier III wireless carriers in that decision).

In addition, it is in the public interest to grant the Petitioner-Small-Carriers a partial waiver of Section 20.18(d) of the Commission's Rules, as that rule was interpreted in *King County, Washington*, FCC 02-146 (released July 24, 2002) ("*King County*"). Unlike the situation which exists in this nation's major metropolitan areas, the remote, rural areas served by the Petitioner-Small-Carriers have only tiny local subscriber bases, and have huge distances between the carrier MSC and the 911 Selective Router of the PSAP provider. This Commission has eliminated any mandatory cost recovery mechanism. Thus, there is no real mechanism for the Petitioner-Small-Carriers to

recover 911 delivery costs, and the cost of delivering E911 information from the carrier MSC to the 911 Selective Router would be greater than any other cost element in operating the entire wireless system! In addition, in most if not all cases, unlike the case with major wireless carrier markets, the majority of persons physically inside the geographic area of a Petitioner-Small-Carrier at any given moment are not local residents, but roamers passing through.

Because of those unique circumstances, enforcing Section 20.18(d) to require the wireless carrier to pay the entire cost of carrying the information from the MSC to the 911 Selective Router would totally undermine the policy underlying the rule, and would result in a diminution of 911 service and increase in danger to the traveling public. Thus, the Commission should partially waive Section 20.18(d) as applied to the Petitioner-Small-Carriers, to the extent that the rule sets the 911 Selective Router, as opposed to the wireless carrier MSC, as the demarcation point for allocating costs between the carrier and the PSAP provider.

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To: The Commission

**PETITION FOR LIMITED AND TEMPORARY
WAIVER OF DEADLINES FOR IMPLEMENTATION
OF PHASE II E911 ON THE SAME BASIS
AS OTHER TIER III WIRELESS CARRIERS,
AND FOR WAIVER OF *KING COUNTY* DEMARCATION POINT
RULING**

Commnet Wireless, Inc. ("CWI"), Commnet of Delaware, LLC ("CDL"), Elbert County Wireless, LLC ("Elbert"), Chama Communications Corp. ("Chama"), Grizzly Bear Wireless Corp. ("Grizzly Bear"), Indian Hills Wireless, Inc. ("Indian Hills"), Excomm, LLC ("Excomm"), Commnet PCS, Inc. ("CPI"), MoCelCo, LLC ("MCC"), Tennessee Cellular Telephone Company ("TCTC"), Commnet Capital, LLC ("Capital"),

and Commnet of Florida, LLC (“Florida”) (collectively, the “Petitioner-Small-Carriers”), by their attorneys and pursuant to Section 1.3 of the Commission’s Rules, hereby petition this Commission for a limited and temporary waiver of the deadlines for implementation of Phase II E911 requirements set forth in Section 20.18 of the Commission’s Rules. Each of the Petitioner-Small-Carriers is a “Tier III” wireless carrier, as that term is defined in the Commission’s recent decision in *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems Phase II Compliance Deadlines for Non-Nationwide CMRS Carriers*, CC Docket No. 94-102, FCC 02-210, released July 26, 2002 (“*Small Carrier E911 Extension*”). As discussed below, each of the Petitioner-Small-Carriers is similarly situated to the Tier III carriers that received an extension of certain interim E911 Phase II implementation deadlines in that case, and should be afforded essentially the same relief for the reasons set forth in that decision.¹

Specifically, the Petitioner-Small-Carriers request the following relief:²

(i) Ensure that at least 25 percent of all new handsets activated are location-capable no later than November 30, 2003;

¹ All facts set forth herein are supported by the attached Declaration of David Walker, who is E911 Liaison Officer for each of the Petitioner-Small-Carriers.

² No handset manufacturer or distributor is willing to sell Phase II location-capable handsets to any of the Petitioner-Small-Carriers, either now or in the foreseeable future, because all of the current manufacturing capacity is going to meet the needs of the six national, Tier I carriers. However, the Petitioner-Small-Carriers were not willing to accept such a state of affairs, and have purchased an inventory of handsets to which the Airbiquity GPS location-capable battery has been added, making those handsets Phase II-compliant location-capable immediately. This inventory is being shared among them at this time. Thus, no extension is required of the obligation to offer location-capable handsets, unless future demand exceeds this inventory.

(ii) Ensure that at least 50 percent of all new handsets are location-capable no later than May 31, 2004;

(iii) Ensure that 100 percent of all new digital handsets activated are location-capable no later than November 30, 2004;

(iv) Ensure that penetration of location-capable handsets among its subscribers reaches 95 percent no later than December 31, 2005;

(v) Once a PSAP request is received, the licensee shall, in the area served by the PSAP, within six months or by September 1, 2003, whichever is later: (1) Install any hardware and/or software in the CMRS network and/or other fixed infrastructure, as needed, (except T-1 connection between the carrier switch and the PSAP, which is addressed below) to enable the provision of Phase II enhanced 911 service; and (2) Begin delivering Phase II enhanced 911 service to the PSAP; and

(vi) Be deemed to have delivered enhanced 911 service to a PSAP whenever all other hardware and/or software has been installed, treating the cost-allocation demarcation point between PSAP and carrier as being the carrier's switching facility ("MSC").

This requested relief is identical to that afforded to Tier III carriers in *Small Carrier E911 Extension, supra*, except in two minor respects: 1) Petitioner-Small-Carriers here seek no waiver or extension of the requirement to begin offering location-capable handsets; and 2) because of the prohibitive cost of dedicated T-1 connections, especially where, as here, switching facilities are located outside the involved market, there are few subscribers and it is not possible for them to cover the cost of such a connection in the rates, the policies underlying the general rule interpretation treating the

demarcation point as the 911 Selective Router would not be served by enforcing that rule interpretation against the Petitioner-Small-Carriers.³

Consistent with *Small Carrier E911 Extension*, *supra*, ¶¶34-35, Petitioner-Small-Carriers understand that any extension would be subject to the same conditions, including without limitation the reporting requirements set forth therein, which were attached by the Commission to the relief afforded in that proceeding to Tier III carriers.

I. Description of the Petitioner-Small-Carriers

A. General Description

Each of the Petitioner-Small-Carriers is a very small carrier operating in either rural service areas or so-called “unserved” areas that went unconstructed by the initial licensee of the area during the original five-year build-out period due to lack of perceived demand.⁴ Each serves only a very small number of subscribers, and except for some of

³This last item is a request for a partial waiver of the decision in *King County, Washington*, FCC 02-146 (released July 24, 2002). It asks that the Petitioner-Small-Carriers be deemed compliant with E911, assuming a cost allocation demarcation point at the carrier MSC switching facility, not at the 911 Selective Router (as those terms are defined in *King County*). Alternatively, if the Commission deems it more appropriate for the parties to share the cost of the connection between the MSC and the 911 Selective Router, then PSAPs demanding separate, dedicated T-1 connections for 911 traffic at least should be obligated to pay one-half the cost of such T-1 connections.

⁴ The specific call signs and licensed market areas of each of the Petitioner-Small-Carriers is listed in attached Exhibit A, all of which are part of this Petition. With five exceptions, all licenses are “unserved area” licenses. Those five exceptions are: Capital, seeking to acquire rural PCS licenses; CPI, holding three rural PCS licenses in North Dakota; MCC and Florida, each holding a Rural Service Area cellular license that was only first issued in 2001 due to years of litigation; and TCTC, holding a Rural Service Area cellular license for a market with a 2000 census population of only 17,499. *See text, infra*. Thus, each of the Petitioner-Small-Carriers is smaller than most of the Tier III carriers whose requests were dealt with in *Small Carrier E911 Extension*.

those who first became operational after October 1, 2001,⁵ none has added any customers since October 1, 2001. Each has selected a handset based solution. Each is technically in compliance with Section 20.18 at this time, but only because none of the Petitioner-Small-Carriers has yet received a Phase II E911 request from a Public Safety Answering Point ("PSAP"), and therefore has no current deadline for implementation of Phase II E911.

Each of the Petitioner-Small-Carriers utilizes a MSC located outside its market. Specifically, each of CWI, CDL, Elbert, Chama, Grizzly Bear, Indian Hills, Excomm, MCC and TCTC shares a single MSC located in Yuma, Arizona.⁶ CPI utilizes a MSC shared with various affiliates of Monet and Wireless North located in Sioux Falls, South Dakota. The PCS licenses pending assignment to Capital currently utilize this Sioux Falls MSC, an arrangement to be continued post-assignment.⁷ Florida has its own

⁵ The carriers that first became operational after October 1, 2001 are Excomm, Chama, Grizzly Bear, MCC, Florida and Indian Hills. They have added only about a dozen subscribers collectively. As discussed in the text, *infra*, most or all local residents using their systems have chosen to receive service indirectly, by signing up for nationwide service plans from Tier I carriers, and therefore are technically "roamers" on the systems of the Petitioner-Small-Carriers.

⁶ That MSC processes approximately 290 emergency 911 calls each month. This is not the number of calls per carrier; it is the total cumulative number of calls per month, from all of the licensees using the MSC put together.

⁷ Presently, this MSC is being used only for PMRS services, not for CMRS services. (PMRS refers to "Private Mobile Radio Service" and CMRS refers to "Commercial Mobile Radio Service" as those terms are defined in Section 20.3 of the Commission's Rules.) Thus, this MSC has never processed a 911 call.

exclusive MSC, but it is located in the Miami, Florida MSA, as there are more calls terminated there than within the RSA served by Florida.⁸

Each of the Petitioner-Small-Carriers was under the impression that it would be premature to seek a waiver/extension of E911 Phase II unless and until it actually received a Phase II E911 request from a PSAP, because until then, it would not be clear whether the carrier would or would not be able to meet the ensuing six-month deadline. Thus, none of the Petitioner-Small-Carriers had filed such a waiver/extension request.

However, in light of the recent decision in *Small Carrier E911 Extension, supra*, it appears that the Commission desires smaller carriers such as the Petitioner-Small-Carriers to file waiver/extension requests immediately, without waiting to see whether they can obtain Phase II E911 capability before a PSAP request is received. Accordingly, this Petition is being filed. Moreover, in light of the recent decision in *King County, supra*, it is necessary for the Petitioner-Small-Carriers immediately to seek a waiver of that ruling, before any PSAP requests are received, as the cost of bringing E911 data from the MSC to a PSAP 911 Selective Router would be prohibitive for any of the Petitioner-Small-Carriers. Those costs would amount to in excess of ten thousand dollars per month per licensee.

B. Carrier-Specific Descriptions

Commnet Wireless, Inc.

Commnet Wireless, Inc. ("CWT"), call sign KNKR208, acquired the unserved area cellular license for frequency block B for the Phoenix and Tucson MSAs from

⁸ In the four weeks for which statistics are available for this newly-operational system, there were 171 emergency 911 calls processed.

Wireless Operating Company, Inc. in 2000. Because cellular MSA/RSA boundaries follow county lines, large swaths of the Sonoran Desert lie within the technical boundaries of these two southern Arizona MSAs. However, because mainstream publicly-traded wireless carriers do not generally provide service to the desert, these large areas went unconstructed by the incumbent licensees and thus became “unserved areas.”

CWI has invested significant sums and expanded service to this outlying area and the small communities within it – towns such as Ajo, Lukeville, Arivaca, Sentinel, to name a few. In many of these towns, there is little landline telephone service, and residents must wait months (or more) to obtain new landline service, making introduction of wireless service even more important, for both commercial and public safety reasons, than it would be in a major urban area.

Almost all of the local residents desiring to use CWI’s service have elected to subscribe to one or another of these nationwide service plans, and receive service from CWI as “roamers.” In fact, no new “local” subscribers have been added since before October 1, 2001.

Commnet of Delaware, LLC

Commnet of Delaware, LLC (“CDL”), call sign KNKR222, acquired the unserved area cellular license for frequency block B for the Bakersfield MSA from the original unserved area lottery winner in 2000, and immediately expanded service from one cell to seven. These sites are in remote and outlying areas of the MSA, either high in the mountains (*e.g.*, Lake Isabella) or the Mojave Desert (*e.g.*, Boron). It fills the same niche in this part of California as does CWI in Arizona.

Elbert County Wireless, LLC

Elbert County Wireless, LLC ("Elbert"), call sign KNKR202, acquired the unserved area cellular license for frequency block B for Colorado RSA No. 5-Elbert from the original unserved area lottery winner earlier this year. It has embarked on an aggressive expansion campaign, going from two cell sites to four, in that short time. Colorado RSA No. 5 is a rural area, and the portion now served by Elbert is sufficiently more rural than the rest, it was left to become "unserved area" by the original licensee. Elbert fills the same niche in this part of Colorado that the other unserved area licensees fill in their respective areas.

Chama Communications Corp.

Chama Communications Corp. ("Chama"), call sign WPRS845, sought authority in 2000 to serve a remote mountain area of New Mexico that remained without cellular service throughout the twentieth century. A construction permit was granted in 2001, and last December, Chama started operating.

Grizzly Bear Wireless Corp.

Grizzly Bear Wireless Corp. ("Grizzly Bear"), call signs WPRS917 and WPRS922, sought authority in 2000 to serve remote areas of various RSAs in the state of Wyoming that remained without cellular service throughout the twentieth century. Construction permits were granted in 2001, and last October, Grizzly Bear started operating.

Indian Hills Wireless, Inc.

Indian Hills Wireless, Inc. ("Indian Hills"), call sign WPRS901, sought authority in 2000 to serve a remote area of Colorado RSA No.6, in southwestern Colorado, that

remained without cellular service throughout the twentieth century. A construction permit was granted in 2001, and in January of this year, Indian Hills started operating.

Excomm, LLC

Excomm, LLC (“Excomm”), call sign WPUD593,⁹ sought authority in December, 2001 to serve a remote area of rural Wyoming, that remained without cellular service throughout the twentieth century. A construction permit was granted earlier this year, and the system recently became operational. There are no “subscribers” at this time, although Excomm has placed advertisements in the local Yellow Pages. So far, all of the local residents using the system have chosen to subscribe to the services of one or another national-footprint carriers, and are therefore technically “roamers.”

Commnet PCS, Inc.

Commnet PCS, Inc. (“CPI”), call sign KNLF940, has just completed its acquisition of a broadband PCS system in the Williston, ND BTA, an extremely rural area of North Dakota.¹⁰ Although operational, this PCS system serves only roamer traffic at this time. However, if the waiver requested herein can be granted, CPI will consider offering subscriber service as well.

MoCelCo, LLC

MoCelCo, LLC (“MCC”), call sign WPTD845, acquired the construction authorization for RSA #509A, Missouri RSA No. 6A, earlier this year, and just recently

⁹ Excomm also holds a number of construction authorizations granted earlier this year, under call signs WPUC784, WPUD594, WPUH602, WPUH619, WPUH800, WPUP317, WPUH805, WPUX427, WPUY962, WPVI996, WPUY963, WPUJ480 and WPUK842, with construction deadlines at various dates in 2003.

¹⁰ CPI also holds two broadband PCS construction authorizations granted in 2001, which it acquired directly from the FCC in Auction No. 35, under call signs WPSJ965 and WPSJ966, with construction deadlines in 2006.

commenced operations. This is an initial RSA cellular license where the lottery winner was the subject of a petition to deny, and where its application remained pending from 1988 until August 31, 2001. Thus, the initial 5-year cellular “fill-in” period for this license does not even expire until August 31, 2006.

This market in rural Missouri is not adjacent to any MSA, and has no interstate highway running through it. This market is so rural that during the twelve+ years that the lottery application remained pending, none of the adjacent cellular carriers ever even sought interim authority to serve it.

Tennessee Cellular Telephone Company

Tennessee Cellular Telephone Company (“TCTC”), call sign KNKR257, operates an unserved area cellular system in a remote, mountainous area of eastern Tennessee, in Tennessee RSA No. 8A, Market No. 650A. This area is so rural that the original licensee failed to construct, and the license went back to the FCC to be included in the original round of unserved area lottery applications in 1993. TCTC acquired the license in 1998, and has not added any new subscribers since before October, 2001. With the advent of so-called “nationwide” service plans offered by the large, publicly-traded cellular carriers, local residents use TCTC’s service indirectly, subscribing to one or another of these nationwide service plans, and receiving service from TCTC as “roamers.”

Commnet Capital, LLC

Commnet Capital, LLC (“Capital”), does not operate any cellular or broadband PCS systems at this time, but is the pending assignee of three broadband PCS licenses for rural areas of Minnesota and South Dakota, and is also an applicant for an unserved area

cellular license in rural New Mexico.¹¹ To the best of Capital's knowledge, each of those three PCS systems roamer service only at this time. Since grant and consummation of the pending assignment are expected shortly, Capital desires to be included in this waiver request, grant of which would facilitate the post-assignment initiation of subscriber-type services.

Commnet of Florida, LLC

Commnet of Florida, LLC ("Florida"), call sign WPSJ791, holds a license for a single cellular RSA in southern Florida. The vast bulk of the land area within this RSA, Florida RSA #11A, Market No. 370A, lies within the Florida Everglades. Florida's *pro forma* predecessor, Monroe Telephone Services, received this license on March 16, 2001 pursuant to the Launching Our Communities' Access to Local Television Act of 2000, Pub. L. No.106-553, 114 Stat. 2762, Title X, §1007 (2000). Florida only commenced operations in August, 2002. Almost all of the local residents desiring to use Florida's service have elected to subscribe to one or another of these nationwide service plans, and receive service from Florida as "roamers."

II. Petitioner-Small-Carriers Are Similarly-Situated to Other Tier III Carriers

In *Small Carrier E911 Extension, supra*, at ¶10, the Commission recognized "that non-nationwide CMRS carriers have much less ability than the nationwide CMRS carriers to obtain the specific vendor commitments necessary to deploy E911 immediately, . . ." This is equally true of the Petitioner-Small-Carriers, who have no market power with handset vendors. Not only does each of the *Petitioner-Small-Carriers*

¹¹ Capital's cellular application is mutually exclusive with those of four other entities, and may not be processed as quickly as are applications that have no mutual exclusivity.

qualify as a “Tier III” carrier as defined in ¶¶22-23 of *Small Carrier E911 Extension*, *supra*, but even if deemed to be a single entity, they collectively have far less than the 500,000 subscriber threshold separating Tier II from Tier III.

Moreover, from a public interest standpoint, it makes sense to enable vendors to concentrate their efforts first on delivering E911 hardware and software to the densely populated major urban areas, where a single network installation will upgrade the safety of millions. In contrast, the installation of the same hardware in the remote areas served by Petitioner-Small-Carriers upgrades the safety of only hundreds, or in some cases, thousands. Public policy as expressed in *Small Carriers E911 Extension* properly directs the vendors to concentrate first on densely populated areas, and then afterward work their way down to progressively less dense areas.

The Petitioner-Small-Carriers have obtained a limited inventory of location-capable handsets through the Airbiquity GPS battery solution, in order to be able to provide them to subscribers that desire to have one far in advance of the actual implementation of Phase II E911. Nonetheless, Petitioner-Small-Carriers should be provided the same relief from the percentage activation benchmarks as were previously afforded to other Tier III carriers.

III. Waiver Is Also Justified with Respect to the Cost Allocation Demarcation

In *King County*, *supra*, the Commission put its imprimatur on an interpretation of Section 20.18(d) of the Rules pursuant to which the demarcation point for allocating costs between wireless carrier and PSAP provider was stated to be the 911 Selective Router, in the absence of any different demarcation point negotiated by the parties. However, in light of that decision, PSAP providers have no incentive to negotiate any different

arrangement with a wireless carrier. This is especially so because the Commission had previously eliminated any mandatory cost-recovery mechanism for carrier expenditures implementing 911 services.

The Commission made its policy decisions setting the demarcation point and eliminating the cost recovery mechanism in the context of nationwide-footprint carriers serving millions of subscribers in large metropolitan areas. It was appropriate for the Commission to do so, because this is where the subscribers and the traffic volume are, as well as the vast majority of the 911 calls.¹² However, the circumstances which led the Commission to make those policy decisions simply do not exist in remote, rural areas.

For example, because the majority of wireless calls continue to be calls originating on the wireless network and terminating on the landline network, the major wireless carriers have an incentive to locate the MSC in the center of the wireless market being served, *i.e.*, in reasonably close physical proximity to the 911 Selective Router. Similarly, because the vast bulk of the people physically located in a major urban area are local residents, the vast bulk of the wireless call volume is from local subscribers, and there is accordingly a huge base of subscribers across which to spread the (largely fixed) cost of paying for E911 – thus, the impact upon subscriber rate-payers is minimal.

In sharp contrast, in remote, rural areas, the vast majority of calls are interstate interexchange calls, the majority of the people physically located in the market area are not local residents, but roamers passing through on the highways, the overall volume of calls is insufficient to cover the cost of a dedicated MSC, and the (still largely fixed) cost

¹² See generally *Small Carrier E911 Extension*, *supra*, at ¶7 & n.16, which states that the nationwide-footprint carriers serve 100 million subscribers as of the end of 2001.

of implementing E911 would have to be spread across a tiny base of local subscribers if there were no cost-recovery mechanism.

For most of the Petitioner-Small-Carriers, if they are required to pay for dedicated T-1 lines to each separate PSAP provider in the market, such dedicated T-1 lines would immediately become the largest cost item in the entire system, exceeding site lease payments, switch-sharing costs, office expenses, and any other expense item! Most such T-1 lines would cost in excess of ten thousand dollars per month, and a separate line would be required for each and every separate PSAP provider, even if there were multiple separate PSAP providers within the same county.¹³ For many of the Petitioner-Small-Carriers, the entire economic viability of the wireless system would be jeopardized, and the only reasonable alternative might be to shut down entirely and leave the area a dead spot for wireless phones.

Stated otherwise, to require the Petitioner-Small-Carriers to bring, at their own expense, the E911 information all the way to the 911 Selective Router, would harm public safety by eliminating all wireless service in the area, guarantying that no wireless 911 calls could go through. Some availability of wireless 911 is better than no such availability.¹⁴ Thus, the purposes underlying the general interpretation of Section 20.18(d) would be undermined by the strict application of that rule interpretation in the

¹³ Most of these counties have a larger land area than the entire state of Rhode Island, and many are larger than Connecticut as well.

¹⁴ If the Petitioner-Small-Carriers (other than Florida) were forced to cease service, approximately 290 emergency 911 calls each month, all originating from remote, rural areas, would not go through. *See* n.6, *supra*.

case of the Petitioner-Small-Carriers, and a waiver is therefore justified under Section 1.3 of the Rules.¹⁵

Nor is it a sufficient answer to say that because the PSAP providers in the remote areas served by Petitioner-Small-Carriers are likely to be among the last such providers to obtain and request E911 capability, that therefore the requested waiver is unnecessary or premature. There is no guaranty that such PSAP providers will be among the last to obtain the capability for utilizing the information, and as the decision in *Small Carrier E911 Extension* indicates, this Commission already has decided that it cannot wait until such a conflict arises to sort out these issues.

Therefore, it is appropriate for the Commission to consider and rule upon this requested waiver at this time, before negotiations between wireless carrier and PSAP provider begin.

CONCLUSION

Each of the Petitioner-Small-Carriers is a Tier III carrier, as defined by the Commission in *Small Carrier E911 Extension, supra*. Even if all of the Petitioner-Small-Carriers were deemed a single carrier and their subscriber figures combined, the combined entity still would be a Tier III carrier. This is because the Petitioner-Small-Carriers serve only remote, rural areas, where the circumstances differ greatly from those that exist in major urban areas and with respect to major, nationwide-footprint carriers.

¹⁵ As noted, *see* n.3, *supra*, each of the Petitioner-Small-Carriers stands ready to seek negotiated solutions with PSAP providers, and is willing to share costs with them if need be. But unless the Commission affords some sort of relief from the requirement that each Petitioner-Small-Carrier pay ALL costs between the MSC and the 911 Selective Router, there is no incentive for any PSAP provider to even engage in negotiations.

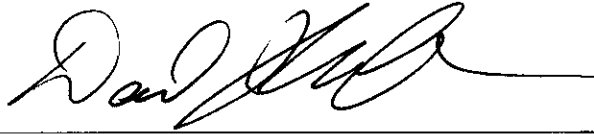
The same policy considerations which led this Commission to afford limited relief to other Tier III wireless carriers in the *Small Carrier E911 Extension* decision also justify extension of the same relief to the Petitioner-Small-Carriers here (subject, of course, to the same conditions imposed on other Tier III wireless carriers in that decision).

Unlike the situation which exists in this nation's major metropolitan areas, the remote, rural areas served by the Petitioner-Small-Carriers have only tiny local subscriber bases, and have huge distances between the carrier MSC and the 911 Selective Router of the PSAP provider. Thus, in the absence of any mandatory cost recovery mechanism, there is no real mechanism for recovering 911 delivery costs, and the cost of delivering E911 information from the carrier MSC to the 911 Selective Router would be greater than any other cost element in operating the entire wireless system! In addition, in most if not all cases, unlike the case with major wireless carrier markets, the majority of persons physically inside the geographic area of a Petitioner-Small-Carrier at any given moment are not local residents, but roamers passing through.

Because of those unique circumstances, enforcing Section 20.18(d) to require the wireless carrier to pay the entire cost of carrying the information from the MSC to the 911 Selective Router would totally undermine the policy underlying the rule, and would result in a diminution of 911 service and increase in danger to the traveling public. Thus, the Commission should partially waive Section 20.18(d) as applied to the Petitioner-Small-Carriers, to the extent that the rule sets the 911 Selective Router, as opposed to the wireless carrier MSC, as the demarcation point for allocating costs between the carrier and the PSAP provider.

Respectfully submitted,
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multiclient/E911/September2002WaiverRequest.doc

Exhibit A

Company	Call Sign	Market	Status
Commnet Wireless, Inc.	KNKR208	CMA026	Constructed
		CMA077	Constructed
Commnet of Delaware, LLC	KNKR222	CMA097	Constructed
		CMA340	Constructed
Elbert County Wireless, LLC	KNKR202	CMA352	Constructed
Chama Communications Corp.	WPRS845	CMA553	Constructed
Grizzly Bear Wireless Corp.	WPRS917	CMA719	Constructed
		CMA299	Constructed
	WPRS922	CMA719	Constructed
Indian Hills Wireless, Inc.	WPRS901	CMA353	Constructed
		CMA350	Constructed
Excomm, LLC	WPUD593	CMA720	Constructed
		CMA348	Pending
	WPUC784	CMA580	Construction Permit
		CMA581	Construction Permit
		CMA584	Construction Permit
	WPUD594	CMA349	Construction Permit
	WPUH602	CMA523	Construction Permit
	WPUH619	CMA584	Construction Permit
		CMA298	Construction Permit
	WPUH800	CMA584	Construction Permit
	WPUP317	CMA584	Construction Permit
		CMA635	Construction Permit
		CMA636	Construction Permit
	WPUH805	CMA528	Construction Permit
		CMA297	Construction Permit
		CMA530	Construction Permit
	WPUX427	CMA721	Construction Permit
	WPUY962	CMA356	Construction Permit
	WPVI996	CMA320	Construction Permit
	WPUV963	CMA355	Construction Permit
		CMA356	Construction Permit
	WPUJ480	CMA720	Construction Permit
		CMA718	Construction Permit
	WPUK842	CMA348	Construction Permit
Commnet PCS, Inc.	KNLF940	BTA476	Constructed
	WPSJ965	BTA045	Construction Permit
	WPSJ966	BTA299	Construction Permit
MoCelCo, LLC	WPTD845	CMA509	Constructed
Tennessee Cellular Telephone Company	KNKR257	CMA650	Constructed
Commnet Capital, LLC	KNLF934	BTA037	Pending Assignment
	KNLG952	BTA464	Pending Assignment
	KNLG953	BTA481	Pending Assignment
	Application	CMA285	Application
		CMA555	Application
Commnet of Florida, LLC	WPSJ791	CMA370	Constructed

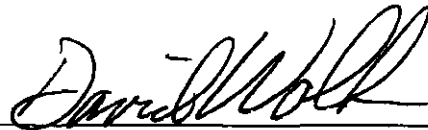
DECLARATION OF DAVID WALKER

David Walker hereby states, under penalty of perjury, as follows:

1. My name is David Walker. I am the E911/CALEA Liaison Officer for each of Commnet Wireless, Inc., Commnet of Delaware, LLC, Elbert County Wireless, LLC, Chama Communications Corp., Grizzly Bear Wireless Corp., Indian Hills Wireless, Inc., Excomm, LLC, Commnet PCS, Inc., MoCelCo, LLC, Tennessee Cellular Telephone Company, Commnet Capital, LLC, and Commnet of Florida, LLC. (collectively, the "Petitioner-Small-Carriers"). The Petitioner-Small-Carriers are small carriers who employ me on a collective basis to be responsible for compliance with E911 and CALEA requirements.

2. I have reviewed the Petitioner-Small-Carriers' "Petition for Limited and Temporary Waiver of Deadlines for Implementation of Phase II E911 on the Same Basis as Other Tier III Wireless Carriers, and for Waiver of *King County* Demarcation Point Ruling" ("Petition"). All facts set forth in the Petition are true and correct, to the best of my knowledge, information and belief.

Executed September 9, 2002.



David Walker